

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.262 OF 2016

Vinod Ratilal Solanki, Adult,
R/o.Dhanukar Wadi, Duttawadi,
Renuka Road, Linking Road, Kandivali (W),
Mumbai-400 067.

Applicant

versus

1. Ms.Seema Kondiba Sonawane,
Adult, R/o.Flat No.415, R/5, MMRDA Project,
Subhash Nagar, Bhandup (West),
Mumbai-400 078.

2. Smt.Lata Vinod Solanki, Adult,
R/o.Dhanukar Wadi, Duttawadi, Renuka Road,
Linking Road, Kandivali (West),
Mumbai-400 067.

3. The State of Maharashtra.

Respondents

Advocate Gayatri Nayak with Mr.Abhijeet Nayak i/by Adv.Rajesh P.
Khobragade for applicant.
Ms.M.S.Mhaispurkar, APP, for State.

CORAM : PRAKASH D. NAIK, J.

Date of reserving the Judgment : 23rd January 2018
Date of pronouncing the Judgment : 16th March 2018

JUDGMENT :

1. The applicant has invoked revisional jurisdiction of this Court under Section 397 read with Section 401 of Code of Criminal Procedure, 1973 ('Cr.PC') to challenge the order dated 10th March 2014 passed by learned Metropolitan Magistrate, 53rd Court, Mulund, Bombay below Exhibit-5 in C.C.No.24/DV/2012 as well as order

dated 16th May 2012 issuing process and the order dated 8th February 2016 passed by Sessions Court in Criminal Appeal No.656 of 2015.

2. The respondent no.1 preferred an application u/s 12 of Protection of Women from Domestic Violence Act (hereinafter referred to as 'D.V.Act') before the Court of learned Metropolitan Magistrate, 53rd Court, Mulund, Mumbai. The respondent no.1 also preferred an application for interim relief u/s 23 of D.V.Act and sought maintenance from the revision applicant. This application was preferred on 29th May 2013.

3. Learned Metropolitan Magistrate by order dated 10th March 2014 granted interim relief to respondent no.1 by partly allowing application Exhibit-5. The revision applicant was directed to pay maintenance of Rs.2,000/- p.m. to the respondent no.1 for her child from the date of application and the respondent no.1 was permitted to receive the amount on behalf of child. The revision applicant was also directed to pay rent of Rs.2,000/- p.m. to respondent no.1 and her child. The applicant or anybody on behalf of applicant herein were prohibited from committing any type of act of domestic violence to respondent no.1.

4. The revision applicant thereafter preferred Writ Petition No.2114 of 2014 before this Court challenging the aforesaid order. The said petition was disposed off by order dated 28th April 2015 by granting liberty to the applicant to file an appeal u/s 29 of D.V.Act. The applicant thereafter preferred an appeal before the Sessions Court which was numbered as Criminal Appeal No.656 of 2015. The said appeal was dismissed by order dated 8th February 2016.

5. The applicant is aggrieved by the aforesaid orders and has preferred present revision application challenging the said order as well as order taking cognizance of the application filed by respondent no.1 under D.V.Act.

6. The applicant contended that respondent no.2 is the legally wedded wife of the applicant. He had a love affair with respondent no.1. They had physical relationship resulting into pregnancy and abortion. Thereafter both of them had amicably break off in the year 1998. The applicant solemnized his marriage with respondent no.2 in 2002. There was no domestic relationship between the applicant and respondent no.1 and they never resided together under the same roof. The respondent no.1 was aware that the applicant is married and he does not have any issue out of marriage. In the year 2003, respondent no.1 met the applicant at Siddhivinayak Temple and requested him to provide financial assistance for her mother's treatment and accordingly the applicant had provided Rs.25,000/- as help, which was to be refunded by respondent no.1. The applicant thereafter demanded the said amount from respondent no.1 and hence to avoid the payment, she filed a false case.

7. Learned counsel for applicant submitted that respondent no.1 is not legally wedded wife of the applicant nor she falls in category of live-in-relationship. Hence, maintenance cannot be granted to respondent no.1. Respondent no.1 has suppressed vital facts while filing application u/s 12 of D.V.Act. The Lower Courts have failed to appreciate that there was no relationship of marriage or relationship in the nature of marriage between applicant and respondent no.1.

The applicant was already married to respondent no.2 under Hindu Marriage Act and respondent no.1 had knowledge of the said fact and in spite of that, she wilfully entered into relationship with the applicant. The respondent no.1 did not produce any documentary proof about the illegal second marriage of applicant and respondent no.1.

8. It is submitted that to qualify a valid marriage under Hindu Marriage Act, the conditions laid down in Section 5 of the said Act are required to be satisfied. Respondent no.1 could not establish that the relationship between her and the applicant was in the nature of marriage. To qualify such a relationship, couple must hold themselves out to society as being akin to spouses and they must be qualified to enter into a legal marriage and they must have voluntarily cohabited and held themselves out as being akin to spouses for a certain period of time. The Courts below failed to consider that the applicant was already married before respondent no.1 came into relationship with him, which is an admitted fact and thereupon respondent no.1 cannot claim any relief under D.V.Act. During existence of first marriage, the second marriage was void. Learned advocate for applicant places reliance on the decision of Hon'ble Supreme Court of India in case of **Indra Sarma Vs. V.K.V.Sarma**¹.

9. I have perused the documents on record. The applicant seeks to challenge the interim order passed in the application for interim reliefs preferred by respondent no.1. The main application u/s 12 of D.V.Act is pending before the Court for consideration. The applicant has not disputed that he was in relationship with respondent no.1.

1 Special Leave Petition (Cri.) No.4895/2012, decided on 26th November 2013

The grievances of respondent no.1 is that she got acquainted with the applicant in the year 2003 and they had developed intimacy which continued till 2007. Thereafter again in 2009, both of them came into contact with each other. The applicant took her to his house. The respondent no.1 and the applicant had physical relationship and respondent no.1 was pregnant. Respondent no.1 then delivered a child which is now aged about two years. The revision applicant, however, subjected her to domestic violence and deserted her. The applicant is earning Rs.25,000/- per month and that the respondent no.1 has no source of income. She has to maintain her child and hence she claims monetary relief. The revision applicant filed his reply and contended that respondent no.1 is earning and is not entitled for maintenance. He never took respondent no.1 to his house and there was no domestic relationship. She was aware that the applicant is married. It was also contended that the revision applicant had given financial assistance to respondent no.1 which was not refunded by her and to avoid the same, the impugned application under D.V.Act was filed. In the absence of domestic relationship, the question of domestic violence does not arise. It was further contended that the applicant is only a friend of respondent no.1.

10. To counter the relief prayed in this application, the respondent no.1 has filed a reply along with documents, which are annexed to the said reply. In the reply it is stated that respondent no.1 was married to applicant on 29th December 1999. The marriage was performed at Siddhivinayak Temple, Mumbai in the presence of relatives. Along with reply respondent no.1 has enclosed photographs of the marriage which were clicked in the presence of

relatives. It is further contended that both of them had resided as husband and wife under the same roof and the revision applicant had physical relationship with respondent no.1. He did not have child for more than nine years out of wedlock with respondent no.2. It is stated that respondent no.1 was pregnant at her matrimonial home in the year 2009 and the child was born at Rajawadi Hospital at Mumbai. The birth certificate of the child is also enclosed which shows the name of applicant as the father of child. It is also stated that respondent no.2 had lodged several complaints to Police Department and Social Service Branch at Chembur. The applicant has not complied the order of Trial Court till date. It is stated that the applicant is deliberately delaying the proceedings before the Trial Court.

11. Learned Magistrate after considering the submissions advanced by both the parties had directed that the revision applicant or anybody on behalf of him were prohibited from committing any type of domestic violence to respondent no.1. The applicant was directed to pay Rs.2,000/- p.m. to respondent no.1 for her child and also Rs.2,000/- p.m. towards rent to them. Learned Magistrate while passing the said order has taken into consideration all the factual aspects and contentions of both the parties. It was observed that there are statements of both the sides so as to verify the relationship between them. The Court perused the counselling records of police station, which shows that the revision applicant had admitted before the counselling officer that he was residing along with original applicant as husband and wife without marriage and they had a child out of their physical relationship. He also admitted before the Counselling Officer as well as Women Assistance Cell, Social Service

Branch, Chembur that he came into contact with the original applicant in the year 1998 and there was physical relationship between them in the year 2009. He took respondent no.1 to his house and they stayed under the same roof and had physical relationship for which his wife had no objection. The revision applicant also admitted that the child was born out of their physical relationship and that his wife had no objection for the same. The Trial Court, therefore, observed that the statements of the revision applicant before the aforesaid authorities indicates the physical relationship between the revision applicant and the respondent no.1 and although they did not marry, they resided under the same roof. The Court further observed that the contention of respondent no.1 was supported by documentary evidence and the revision applicant could not produce any documents to show that he had only friendship with respondent no.1. The documents relied upon by respondent no.1 were prepared by public servants in official gazette. The Court, therefore, allowed the said application for interim reliefs.

12. The Sessions Court while dismissing the appeal filed by the applicant herein, had also considered the rival contentions and by giving cogent reasons passed impugned order. The contention of revision applicant that there was no domestic violence between the parties or that there was no relationship in the nature of marriage, was rejected. I do not find any reason to interfere in the orders passed by both the Courts below. The documents on record indicate that both the parties were in relationship and had resided under the same roof. On account of said relationship the child was born to them which is aged about two years. The applicant had admitted his relationship before police authorities, which he tried to deny before

the Trial Court. Prima facie case was made out for granting interim reliefs on the basis of material on record, which prima facie indicated that there was domestic relationship and domestic violence, which warranted grant of reliefs. It is pertinent to note that the Court had granted relief in the nature of rent to respondent no.1 and her child and maintenance to the child. The decision relied upon by the applicant can be distinguished. The main application is still pending and the parties will be at liberty to adduce evidence in support of their claims and counter claims and defences.

13. The domestic incidence report was considered by the Court below, which contained details in prescribed format reflecting domestic violence caused by revision applicant. The original applicant/respondent no.1 filed police report against the applicant herein on 4th May 2012 as well as complaint to Home Department and N.C. Complaint. The respondent no.1 had contended before the Trial Court that she was induced by applicant to reside with him along with his wife. She was accepted by his family since his wife was not conceiving. The respondent no.1 also relied upon the photographs which reveal that she is recognised as wife of applicant at his residence. In the say filed by the applicant before the Trial Court, he had denied the allegations made in the application. It was also denied that she had stayed with him at any point of time. The documents relied by original applicant are contrary to the defence of revision applicant.

14. In the case of Indra Sarma (supra), the Supreme Court has addressed the issue whether live-in-relationship would amount to relationship in the nature of marriage falling within the definition of

domestic relationship u/s 2(f) of D.V.Act, and whether disruption of such relationship by failing to maintain a woman involved in such a relationship, amounts to domestic violence within meaning of Section 3 of D.V.Act. In the facts of the said case, the Supreme Court held that the applicant therein had failed to establish her case within the purview of D.V.Act. The respondent therein was a married person and developed intimacy with the applicant therein and started living with the said applicant in a shared household. The family members of the original applicant including her father, brother and sister as well as wife of respondent no.1, opposed the live-in-relationship. In the present case, the case of respondent no.1 is that the applicant and the respondent no.1 resided under the same roof and that respondent no.1 had conceived on account of physical intimacy and that the relationship was not objected to by the wife of applicant. In the present case, prima facie, there are documents on record to support the case of respondent no.1 and therefore the factual aspects involved in the matter before the Apex Court can be distinguished. In the present case the applicant herein had admitted before the authorities that he was residing with respondent no.1 under the same roof as husband and wife. In the circumstances the decision relied upon by the applicant cannot come in the way of respondent no.1. The Appellate Court has referred to the said decision and by assigning reasons distinguished the said decision, and dismissed the appeal. In paragraph 10 of the order passed by the Appellate Court, it is observed that material prima facie available by reason of pleadings of parties and other documents, reveal that the respondent was residing at the residence of appellant with his wife and the sexual relationship between them was recognized by the family members. In paragraph 12 of the said order it was

observed that the observations of Supreme Court in paragraph 65 of the aforesaid decision are also required to be looked into to ascertain as to in what circumstances the said observations were made by Supreme Court. In the case before Supreme Court, the factual aspects were that the original applicant therein was party to adultery and bigamous relationship and that such relationship was opposed by the wife of said respondent as well as by the parents and other relatives. The facts in the present case would differ as in this case according to respondent no.1, the wife of the applicant as well as other relatives of applicant, have accepted the relationship between the applicant and respondent no.1. In the case before Supreme Court the parties have never entertained any intention to bear children and pregnancy therein was terminated on three occasions, whereas in the present case, the intention of the parties to have child in the family for which, apparently, the respondent no.1 was given a status of wife. In the decision of Supreme Court it was observed that having children is a strong circumstance to indicate the relationship in the nature of marriage. In the said case the respondent no.2 had never held out to the public with original applicant therein was his wife and there was no evidence of their socialization in public. Thus, the nature of relationship which was subject matter of the said decision was different than the set of facts in the present case. Thus, prima facie, the relationship of respondent no.1 with the applicant herein was in the nature of marriage and, therefore, the application was maintainable in law and the Trial Court rightly granted interim relief. In the present application, the applicant had also prayed for setting aside the order of issuance of process. For all the reasons stated hereinabove, no case is made out for grant of any relief in this application. The monetary relief granted by the Trial Court and

confirmed by the Appellate Court, is based on documentary evidence and the pleadings of the parties. It does not require interference.

15. Hence, I pass following order :

ORDER

- (i) Criminal Revision Application No.262 of 2016 is dismissed;
- (ii) The observations made in this order are for considering the issues involved in the interim application preferred by respondent no.1 and the Trial Court while deciding the main application shall not be influenced by the same.

(PRAKASH D. NAIK, J.)

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